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CONSOLIDATED REPLY

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I. INTRODUCTION

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In addition, Petitioners claimed that certain 800 number subscribers were not provided with the opportunity to request protection for, or "replication" of, the number to which they subscribed in the 888 SAC. Accordingly, Petitioners asked the Bureau to provide an additional period of time for replication requests.

The three entities responding to the Petition all oppose it. This is not surprising, inasmuch as they are all RespOrgs, and thus have a vested interest in encouraging allocation of new toll free numbers because the more numbers that are allocated, the more toll free calls are made, and thus the RespOrgs stand to make a greater profit.^{1/} The Bureau should not place the interests of these parties above those of the public as a whole.

II. REPLY TO THE SPECIFIC FILINGS

A. MCI

MCI attacks Petitioners' request for reconsideration on the following grounds: (1) Petitioner Genesis Two, Inc. ("Genesis") obtained replication of its number, so there is no remediable injury (at p. 2, n.2 of MCI's filing); (2) reclaiming numbers already allocated in the 888 SAC is disruptive (at pp. 3-4); (3) selecting another SAC to which to move customers may be difficult (at pp. 4-5); and (4) reopening the window would create problems because of new disputes that might arise (at pp. 5-6).

None of these arguments outweigh those made by Petitioners. In response to the first point, the Petition was filed not only by Genesis, but also on behalf of other 800 number

^{1/} Interestingly, none of these entities have rebutted Petitioners' statements that certain RespOrgs have provided 800 numbers for free as part of marketing promotions.

subscribers, who were unable to replicate their 800 numbers. Thus, there are clearly those who have been "injured" by the denial of their replication rights.^{2/}

In response to MCI's remaining arguments, Petitioners submit that the interests of those who have subscribed to 888 numbers only within the last nine or ten weeks should not take priority over 800 number subscribers who, in most cases, have held their numbers for substantially longer periods of time, and thus have built substantially greater equity in them. To address MCI's concerns about problems arising from reclaiming 888 numbers, Petitioners support the allocation of a sufficient period of time (say, 120 days) before displacing existing 888 number subscribers to allow them to modify their marketing and promotional materials to specify new numbers.

B. Sprint

Sprint's Opposition essentially alleges the following: (1) Petitioners failed to identify those 800 number subscribers who were denied the opportunity to replicate their numbers in the 888 SAC (at pp. 2-3); (2) Petitioners have not provided an estimate as to the total financial harm suffered by 800 number subscribers (at p. 3); (3) Petitioners have not cited examples of confusion engendered by the new toll free SAC (at p. 5); (4) the FCC has never stated that 800 numbers should be used only by commercial subscribers (at p. 3); (5) Petitioners have not supported their allegation that there are millions of unused or underused 800 numbers currently assigned to residential subscribers (at p. 4); (6) the SAC by service approach is not feasible because the 500 SAC has been allocated to use for Personal Communications Services ("PCS") (at pp. 4-5); (7)

^{2/} Moreover, MCI ignores the injury that has been suffered by all 800 number subscribers, including Petitioners, whose 800 numbers have diminished in value because of the unnecessary implementation of the 888 SAC.

reclamation of 888 numbers already assigned to customers and cessation of further assignments is not in the public interest (at p. 5).

With respect to Sprint's first point, Petitioners have been contacted by several subscribers that stated they were either unaware of their rights or were denied the right to replicate. Petitioners have tried mightily to obtain information that would allow them to identify the hundreds of other 800 number subscribers who were denied replication. Unfortunately, that information is in the control of Data Services Management, Inc. ("DSMI"), and DSMI will not release it to Petitioners. Petitioner Genesis even became a RespOrg, in part to obtain this information, but DSMI still has not relinquished it.

Second, financial harm if it can ever be quantified at all, certainly cannot be quantified prospectively in this case. Inasmuch as the 888 SAC was implemented only as of March 1, it is impossible to project with any precision the number of misdials or the number of calls not made due to consumer confusion or frustration. In any event, the Bureau has never required parties to prove financial injury in determining whether a proposed rule could cause harm. Thus, Sprint's reliance on this argument is misplaced.^{3/}

Third, with respect to Sprint's argument that there is no evidence of consumer confusion sufficient to overturn the implementation plan, it is important to bear in mind that it is still early in the process. Episodes of confusion are no doubt occurring every day, but are impossible to document at this point. This does not mean that there is no documentation of problems related

^{3/} Sprint also suggests that a more appropriate venue for expressing Petitioners' grievances is the Bureau's Enforcement Division, where Petitioners could file a complaint against certain RespOrgs. But as Sprint well knows, this avenue would be fruitless, given the "limitation of liability" clauses in the tariffs of most large RespOrgs providing toll free services.

to implementation of the 888 SAC. Attached at Exhibit A is an article from the Wall Street Journal which illustrates the difficulties of implementation when different entities have the same toll free number in different SACs. In this case, switches that were not prepared to accept 888 number dials have led consumers to dial the 800 version of the number. This also demonstrates that consumers do not yet understand that 888 and 800 numbers can be subscribed to by different entities.

Fourth, Petitioners concede Sprint's point that there is no "law" that states that 800 numbers should only be allocated for commercial use. However, the FCC can take actions under its public interest mandate even if no "law" requires it to do so. As Petitioners explained in their Petition, 800 number service has become associated in most U.S. consumers' minds as a business service, and not a residential service. It is in the public interest for the Commission to maintain this distinction. Unlike business subscribers, residential subscribers do not depend on their toll free numbers to make a living (or, in the case of health and safety service providers, to save a life).

Fifth, with respect to the "underusage" point, neither Sprint nor the other commenters dispute Petitioners' claim that almost half of the toll free numbers allocated in the 800 SAC are allocated to residential and paging customers. It defies credulity to argue that those numbers are fully utilized; obviously, very few residential consumers receive a significant number of 800 number calls. Moreover, as stated in this petition, there are ways that residential users can share numbers through Personal Identification Number technology.

Sixth, Petitioners understand that the 500 SAC has been allocated to PCS use, but highly doubt that there will be that many requests for numbers in the 500 SAC, at least for the

foreseeable future. Furthermore, the type of use proposed for the 500 SAC -- a form of "call forwarding" -- is somewhat related to residential usage of toll free SACs. In any event, Petitioners are not wedded to the 500 SAC as an alternative, and would support allocation of toll free numbers for residential or private users in other SACs (such as 600, 588, etc.) if the need arose in the future. This need, however, is not yet apparent.

Finally, Sprint makes the same argument as MCI that reclamation of existing 888 numbers, and cessation of future 888 number allocations, is disruptive. However, whatever disruptive effect Petitioners' proposal may have is surely outweighed by the benefits of preserving the integrity of commercial use of the 800 SAC.

C. Scherer

Scherer's "Response" was filed May 7, 1996. However, neither Petitioners nor their counsel were served with a copy of this filing. Nor does the filing bear a certificate of service evidencing an attempt to serve Petitioners or counsel. Only by happenstance did counsel discover this filing at the FCC.

Scherer's failure to properly serve Petitioners constitutes a violation of Section 1.429(f) of the Commission's Rules. That section requires that oppositions to a petition for reconsideration be served on the person who filed the petition. In addition, Section 1.49(g) of the Commission's rules states that parties required to serve others with their filings must submit "proof of service." As noted, Scherer failed to include such proof with its filing. Accordingly, Scherer's Response is procedurally defective, and should be dismissed by the Bureau.^{4/}


^{4/} Curiously, Scherer cites Section 1.4(b) of the Rules as support for its response. That section addresses time calculations for filing responsive pleadings, not the rules for filing
(continued...)

Even if Scherer's Response is considered by the Bureau as an informal comment, it raises no arguments worthy of response that have not already been raised by either MCI or Sprint.

III. CONCLUSION

None of the pleadings filed in response to the Petition raise arguments that alter the conclusion that the implementation plan for the 888 SAC is defective. Accordingly, Petitioners ask the Bureau to reconsider that portion of the R&O allowing 888 to go forward, and to grant the relief requested in the Petition.

Respectfully submitted,



T. MICHAEL JANKOWSKI
COLLIER, SHANNON, RILL & SCOTT
3050 K Street, N.W.
Suite 400
Washington, D.C. 20007
(202) 342-8400

Counsel to Genesis Two, Inc. and
Stop 888 Coalition

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4/(...continued)

oppositions to petitions for reconsideration. In any event, had Scherer reviewed Section 1.4(b) more carefully, it would have noticed a cross-reference to Section 1.429 -- the applicable rule -- in Example 2.

SOURCE:

THE WALL STREET JOURNAL

May 6, 1996

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Some Callers Seeking a Cell Phone Are Landing in a Hospital Instead

By QUENTIN HARDY

Staff Reporter of THE WALL STREET JOURNAL

Ordering Motorola's new phone could send you to the hospital.

The cellular-telephone maker's ads in large U.S. newspapers for its new palm-sized cell phone, called the StarTac, feature a toll-free number with an 888 prefix that doesn't work on many phones.

The problem: Some telephone systems aren't yet programmed for the prefix; the same problem occurs with many of the new area codes that are being introduced as the old area codes fill up.

So potential customers have been trying the older toll-free 800 prefix — and getting the Methodist Physician's Helpline, a service of the Methodist Hospital in Memphis, Tenn.

Anna Lee Gaia, the help line's support coordinator, isn't amused. "We got 300 calls a month on this line, then Motorola put an ad in the Chicago Tribune and I started getting 200 calls a day," she says. Ms. Gaia frets that doctors who call the hospital for advice can't get through because of the overload.

Furthermore, she says, "some people are very rude," when they hear they've got the wrong number, insisting that the Meth-

odist hospital could sell them the telephone.

The snafu could be bad news for Motorola, since the programming problem is common among office-type phone networks, and the 3.1-ounce StarTac, which retails for between \$1,399 and \$1,995, is aimed at business users.

On the other hand, the mix-up may also prove that StarTac is the hit Motorola was hoping for. Even with problems getting connected, real Motorola operators have been swamped with calls since the campaign started in early April.

In Memphis, Ms. Gaia has steered so many people to a correct 800 number for Motorola sales (which unlike the current number doesn't spell "StarTac" but does spell "Edmgjo," among other possibilities) that she thinks Motorola "ought to be paying me a salary." So far, though, Motorola's telemarketers have only called to thank her "for being so nice to their customers," she says.

Motorola initially wasn't aware of the wrong-number problem, but, when informed, Jim Cale, vice president of marketing, said of the Methodist Hospital operators: It's "nice they have patience with us . . . that was a pun."

CERTIFICATE OF SERVICE

I, T. MICHAEL JANKOWSKI, certify on this 28th day of May, 1996, that a copy of the foregoing Consolidated Reply has been delivered by hand to the following:

Regina Keeney, Esq.
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

Kathleen Levitz, Esq.
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

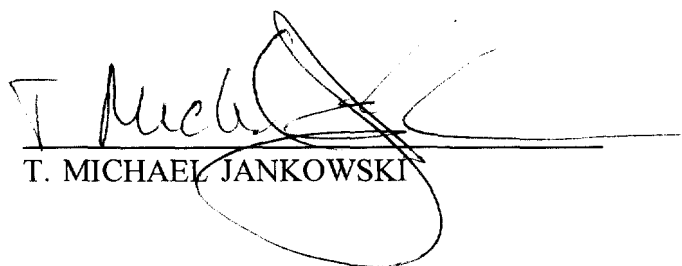
John Morabito, Esq.
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, D.C. 20554

and by first-class mail, postage prepaid to:

Loretta J. Garcia, Esq.
Donald J. Elardo, Esq.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Leon M. Kestenbaum, Esq.
Norina T. Moy, Esq.
1850 M Street, N.W.
Suite 1110
Washington, D.C. 20036

Ms. Susan Drombetta
Manager - Rates and Tariffs
Scherers Communications
Group, Inc.
575 Scherers Court
Worthington, Ohio 43085


T. MICHAEL JANKOWSKI